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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JEAN MILLER,

Plaintiff,

v.

ALLAN R. GRIFFITH, et al.,

Defendants.

2:10-CV-1994 JCM (PAL)

ORDER

Presently before the court is plaintiff Jean Miller's emergency petition for temporary restraining order and temporary injunction. (Doc. #12). Plaintiff has also filed an amended motion for temporary restraining order. (Doc. #13).

Plaintiff alleges that the Bank of New York Mellon has attempted "to confiscate [plaintiff's] real property through a fraudulent non-judicial foreclosure based on the felonious acts of filing numerous false and/or forged documents in an NEVADA public office by Defendants." (*Id.*). Specifically, plaintiff alleges that the defendants have not reported the notes on the disputed properties as assets on their accounting report to the Internal Revenue Service. (Doc. #12, p.3). Plaintiff requests that "the Genuine Original NOTES be sequestered and held by this Court until such time as this Court adjudicates this matter," arguing that if the notes are not produced then they do not exist and any foreclosure or eviction will be wrongful. *Id.*

According to Federal Rule of Civil Procedure 65, a court may issue a temporary restraining order when the moving party provides specific facts showing that immediate and irreparable injury,

1 loss, or damage will result before the adverse party's opposition to a motion for preliminary
 2 injunction can be heard. The Supreme Court has stated that courts must consider the following
 3 factors in determining whether to issue a temporary restraining order and preliminary injunction: (1)
 4 a likelihood of success on the merits; (2) possibility of irreparable injury if preliminary relief is not
 5 granted; (3) balance of hardships; and (4) advancement of the public interest. *Winter v. N.R.D.C.*,
 6 129 S. Ct. 365, 374–76 (2008).

7 Although plaintiff has not specifically pleaded a claim for relief, the court adduces three: (1)
 8 a request for injunctive relief, (2) a claim of wrongful foreclosure, and (3) a request to quiet title.
 9 However, the court is unable to grant plaintiff's motion for a temporary restraining order based on
 10 any of these three possible claims, because the plaintiff has failed the first element of the *Winter* test
 11 and is not likely to succeed on the merits.

12 The first claim is a remedy not a cause of action. Furthermore, plaintiff has not stated when
 13 the foreclosure sale is scheduled; if the sale has occurred, the motion is moot.

14 Insofar as plaintiff is claiming wrongful foreclosure, her claim is unsuccessful, because
 15 plaintiff has failed to allege that she is current on her mortgage payments. *See Collins v. Union*
 16 *Federal*, 662 P.2d 610, 623 (Nev. 1983) (holding that the mortgagor must establish that, at the time
 17 the power of sale was exercised, the mortgagor had not breached the mortgage agreement). Similarly,
 18 "[a] trustor cannot quiet title without discharging his debt. The cloud upon his title persists until the
 19 debt is paid." *Aguilar v. Bocci*, 39 Cal. App. 3d 475, 478 (1974).

20 Accordingly,

21 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for
 22 temporary restraining order (doc. #12) and amended motion for temporary restraining order (doc.
 23 #13) are hereby DENIED.

24 DATED February 24, 2011.

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 26 
 27 UNITED STATES DISTRICT JUDGE
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